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| 10/583,694      | 06/20/2006  | Anton Oppel          | 2003P01958WOUS      | 3506             |

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| EXAMINER |
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OSTERHOUT, BENJAMIN LEE

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| ART UNIT | PAPER NUMBER |
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1711

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06/09/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

NBN-IntelProp@bshg.com

|                              |                                       |                                     |  |
|------------------------------|---------------------------------------|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/583,694  | <b>Applicant(s)</b><br>OPPEL ET AL. |  |
|                              | <b>Examiner</b><br>BENJAMIN OSTERHOUT | <b>Art Unit</b><br>1711             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 11-15, 17, 20, 21 and 23-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-15, 17, 20, 21 and 23-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Drafts, Person's Patent Drawing, Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)             | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the dishwasher with seal connected thereto must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 11 and 28-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 11, Applicant claims in lines 9-11 that “wherein the sealing strip is more flexible than the fixing area and the sealing element, and the sealing lip is more flexible than the fixing area”. Applicant has provided no standard by which the flexibility of the components may be measured, therefore whether one component is more flexible than the other, remain indeterminate. An analogy of this is stating that one material is stronger than another. Does one mean ductile or tensile strength? In the case with the Applicant, does Applicant mean that the more flexible material may be bent further or rebound quicker?

Regarding claims 28-34, these claims are rejected for containing the same indefiniteness issues as the base claim 11.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 11-15, 17, 20-21, 24-26, and 28-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 20050257816 to Kim in view of U.S. Patent Application Publication No. 20050076938 to Jordan et al. (Jordan).

Regarding claims 11-15, 17, 21, 28, and 30-33, Kim teaches a dishwasher with a door 210 and inner container, as is standard in the art. Also taught is a fixing area 217/240, a sealing element 230 with a tubular body, a sealing lip 231, a sealing strip 235, wherein the sealing element contacts the door. The lip creates a seal with the door.

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The gasket is formed of a soft synthetic resin having a predetermined elasticity and stiffness (paragraph 42), thus the lip is considered flexible and further wherein anything may be considered flexible as all objects will flex even if ever so slightly before breaking. The fixing area is adapted for connection to the container, and the sealing element is adapted for contact to the underside of the door. The sealing strip is constructed free of any reinforcing means made of different materials. Kim does not disclose a fixing area being stationary relative to the container when the door is pivoted.

Jordan discloses a fixing area 202 that does not move when the door is pivoted (see figure 6). Such fixing portion is U-shaped and fixed to the container. It would have been obvious at the time of invention to modify Kim and include the fixing portion of Jordan, which does not pivot, in order to connect a seal to the dishwasher.

Regarding the claim language in claim 11, "wherein the sealing strip is more flexible than the fixing area and the sealing element, and the sealing lip is more flexible than the fixing area", since the Examiner has no way of ascertaining the meaning of said language and the prior teaches all of the structural features and limitations of the claim, the prior is considered to render the claim as obvious.

Regarding claims 20, 24-26, 29 and 34, Kim in view of Jordan is relied upon as above in claims 11, 21, 24, and 28. Kim teaches the hollow body. Absent a showing of unexpected results, changes in shape are held to be obvious. Changes in shape or form have been held to be obvious. In re Dailey 149 USPQ 47, 50 (CCPA 1966). More over claims 24, 26, 29, and 34 regard mere changes in shape or form. Additionally, one of ordinary skill knows the value of structural ribs and reinforcing elements. Such

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modifications are considered to be trivial, absent a showing of unexpected results. It would have been obvious to change the shape or provide ribs, as such modifications are conventional.

8. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 20050257816 to Kim in view of U.S. Patent Application Publication No. 20050076938 to Jordan et al. (Jordan) further in view of U.S. Patent No. 5,566,954 to Hahn.

Regarding claim 23, Kim in view of Jordan is relied upon as above in claim 15. Kim does not disclose retaining elements. Jordan discloses fastening means similar to the applicants, where in a U-shaped element fixes the fixing area to the container. Hahn teaches that such a U shaped element can include teeth 30 to grip the piece being fastened. It would have been obvious to one of ordinary skill at the time of invention to modify Kim, and include the fastening means of Jordan and Kahn, in order to fasten the seal to the container.

9. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 20050257816 to Kim in view of U.S. Patent Application Publication No. 20050076938 to Jordan et al. (Jordan) further in view of U.S. Patent No. 4,916,864 to Thompson.

Regarding claim 27, Kim in view of Jordan is relied upon as above in claim 21. Kim in view of Jordan does not teach attachment with screws. Thompson teaches that

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pins or screws can be used to attach seals to home appliances (figure 4). It would have been obvious to one of ordinary skill at the time of invention to modify Kim in view of Jordan, and use screws as a means of fastening, as taught by Thompson, in order to fasten the seal.

### ***Response to Arguments***

10. Examiner has carefully and thoroughly considered Applicant's arguments and rejections, however, Examiner still remains unconvinced.

Applicant's first argument is that the reference to Hechtl does not teach all of the features of the current claims, especially with regard to the sealing lip being flexible. Examiner agrees with Applicant, however, due to Applicant's amendment a new grounds of rejection was necessitated.

Applicant's next argument is that the upper part of bracket 230 in Kim cannot be considered a sealing lip because it does not seal anything. Examiner disagrees with this assertion. Examiner finds that the upper part of the bracket is part of the gasket assembly, one of ordinary skill realizes that gaskets act as seal to guard/block something from some other material. Applicant goes on to argue that the bracket is not flexible. As Examiner asserted earlier, on objects/materials are to one degree or another flexible as these objects will give ever so slightly before the object breaks.

Applicant's next argument is that the lower part of the bracket cannot be considered to be a sealing strip as it defined as being a part of the sealing element. Examiner disagrees with this assertion. Examiner finds that a subcomponent of a whole



may connect the whole to something else while at the same time be considered a portion of the whole. For instance a car's tire can connect the tire to the ground, but the car as a whole may be considered to include the tire and the tire may still be considered an individual component of the car.

Applicant's next argument is that it would not have been obvious to have combined the reference of Kim with that of Jordan. Examiner finds that one of ordinary skill would have easily been able to combine the teachings of both references as the references are concerned with sealing systems for dishwashers. Furthermore, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Applicant needs to consider how to better define the term flexible with a greater degree of certainty wherein said language may define the claims over the prior art. Furthermore, if Applicant desires to have an interview with Examiner, time will be made available.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENJAMIN OSTERHOUT whose telephone number is (571)270-7379. The examiner can normally be reached on Monday-Thursday 8:30am-3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Barr/  
Supervisory Patent Examiner, Art  
Unit 1711

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